

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE, FRANCES ELAINE
PIDDE, JAMES CICHANOFSKY,
ROGER MILLER, and GEORGE
NOWLIN,

Plaintiffs,

v.

CNH INDUSTRIAL N.V. and CNH
INDUSTRIAL AMERICA LLC,

Defendants.

Case 2:04-cv-70592-PJD-PJK

Hon. Patrick J. Duggan, U.S.D.J.

Hon. Paul J. Komives, U.S. Mag. J.

CNH'S MOTION FOR SUMMARY JUDGMENT

In accordance with the unanimous decision by the Supreme Court of the United States in *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015), CNH requests summary judgment in its favor on the issue of whether Plaintiffs' health benefits were vested.

As explained in greater detail in the accompanying brief, *Tackett* undercuts the prior vesting decisions of this Court and the Sixth Circuit. In *Tackett*, the Supreme Court nullified the rules of contract construction set forth in *International Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), and its progeny because they conflict with ordinary principles of contract law. 135 S. Ct. at 935. In particular, it expressly rejected the very rules that this Court and the Sixth Circuit

relied on to hold that Plaintiffs' benefits are vested. *Tackett* went further, setting forth rules of contract construction that will now govern vesting decisions. As shown in the accompanying brief, these rules of construction require entry of summary judgment for CNH.

In accordance with Eastern District of Michigan Rule of Civil Procedure 7.1(a), CNH sought Plaintiffs' concurrence in this motion. Plaintiffs do not concur in the motion.

Dated: February 24, 2015

Respectfully submitted,

Norman C. Ankers (P30533)
(nankers@honigman.com)
Honigman Miller Schwartz and Cohn
LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226
313.465.7306
313.465.7307 fax

s/Bobby R. Burchfield
Bobby R. Burchfield
(bburchfield@mwe.com)
Joshua David Rogaczewski
(jrogaczewski@mwe.com)
Laura J. Capotosto
(lcapotosto@mwe.com)
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, Northwest
Washington, D.C. 20001
202.756.8000
202.756.8087 fax

Attorneys for CNH Industrial N.V. and CNH Industrial America LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2015, I electronically filed the foregoing **CNH's Motion for Summary Judgment** with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants.

s/Bobby R. Burchfield
Bobby R. Burchfield
(bburchfield@mwe.com)
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street, Northwest
Washington, D.C. 20001
202.756.8003
202.756.8076 fax